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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 PAMI A.,

9 Plaintiff,

Case No. C20-5893 RAJ

10 v.

**ORDER REVERSING AND
REMANDING DEFENDANT'S
DENIAL OF BENEFITS**

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

13 Plaintiff seeks review of the denial of her application for Supplemental Security Income
14 Benefits. Plaintiff contends the ALJ erred by (1) rejecting Plaintiff's symptom testimony, (2)
15 rejecting the opinions of Erin Dodge, M.D., and failing to fully address the limitations set forth
16 by Norman Staley, M.D., and JD Fitterer, M.D., and (3) rejecting the opinions of Alysa Ruddell,
17 Ph.D., and therapist Haley Grossan. *See* Dkt. 18, p. 1. As discussed below, the Court
18 **REVERSES** the Commissioner's final decision and **REMANDS** the matter for further
19 administrative proceedings under sentence four of 42 U.S.C. § 405(g).

20 **BACKGROUND**

21 Plaintiff is 54 years old, has a limited education, and has no past relevant work. Admin.
22 Record (Dkt. 16) 22, 78. Plaintiff applied for benefits in July 2018, alleging disability as of July
23 1, 2018. AR 34, 173–78. Plaintiff's applications were denied initially and on reconsideration.

1 AR 77–104. The ALJ conducted a hearing at Plaintiff’s request on September 24, 2019. AR 29–
2 76. On November 25, 2019, the ALJ issued a decision finding Plaintiff not disabled. AR 15–24.
3 In relevant part, the ALJ found Plaintiff had severe impairments of major depressive disorder
4 and generalized anxiety disorder. AR 17. The ALJ found Plaintiff had no physical work
5 limitations, but had some cognitive and social limitations. *Id.*

6 The Appeals Council denied Plaintiff’s request for review, making the ALJ’s decision the
7 Commissioner’s final decision. AR 1–3.

8 DISCUSSION

9 The Court may set aside the Commissioner’s denial of Social Security benefits only if the
10 ALJ’s decision is based on legal error or not supported by substantial evidence in the record as a
11 whole. *Ford v. Saul*, 950 F.3d 1141, 1153–54 (9th Cir. 2020).

12 A. Plaintiff’s Symptom Testimony

13 Plaintiff contends the ALJ erred by rejecting her testimony regarding the severity of her
14 symptoms. Dkt. 18, pp. 2–6. Plaintiff testified she has difficulty leaving her home, and is afraid
15 to go out in public without a family member. *See* AR 38–39, 204, 207, 209. Plaintiff testified
16 she has esophageal spasms almost every day, and has multiple spasms three to four days a week.
17 AR 60. She reported she has problems with lifting, squatting, bending, standing, walking,
18 sitting, kneeling, and climbing stairs due to pain in her back. *See* AR 204, 208–09.

19 The Ninth Circuit has “established a two-step analysis for determining the extent to
20 which a claimant’s symptom testimony must be credited.” *Trevizo v. Berryhill*, 871 F.3d 664,
21 678 (9th Cir. 2017). The ALJ must first determine whether the claimant has presented objective
22 medical evidence of an impairment that “could reasonably be expected to produce the pain or
23 other symptoms alleged.” *Garrison v. Colvin*, 759 F.3d 995, 1014–15 (9th Cir. 2014). At this

1 stage, the claimant need only show the impairment could reasonably have caused some degree of
2 the symptoms; she does not have to show the impairment could reasonably be expected to cause
3 the severity of symptoms alleged. *Id.* The ALJ found Plaintiff met this step. AR 20.

4 If the claimant satisfies the first step, and there is no evidence of malingering, the ALJ
5 may only reject the claimant’s testimony “by offering specific, clear and convincing reasons for
6 doing so. This is not an easy requirement to meet.” *Garrison*, 759 F.3d at 1014–15.

7 The ALJ erred in rejecting Plaintiff’s testimony regarding the severity of her symptoms
8 due to mental impairments. The ALJ first reasoned Plaintiff’s testimony was inconsistent with
9 the medical evidence, which the ALJ found showed unremarkable mental status exams. *See* AR
10 20. But Plaintiff’s providers frequently documented that she was depressed, anxious, tearful,
11 easily distracted, and had rapid speech, among other things. *See, e.g.*, AR 352, 359, 379, 386,
12 392, 407, 518, 521, 539, 651, 660, 675, 690. The ALJ failed to confront this when he stated in
13 summary fashion that Plaintiff’s mental status examinations were “largely unremarkable.” AR
14 20. The ALJ’s conclusory statement here was insufficient to support rejecting Plaintiff’s
15 testimony. *See Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993) (“It’s not sufficient for the
16 ALJ to make only general findings; he must state which [symptom] testimony is not credible and
17 what evidence suggests the complaints are not credible.”).

18 The ALJ next reasoned the evidence showed Plaintiff improved with medication. AR
19 20–21. But “[r]eports of improvement in the context of mental health must be interpreted with
20 an understanding of the patient’s overall well-being and the nature of her symptoms.” *Garrison*,
21 759 F.3d at 1017. Moreover, “[t]here can be a great distance between a patient who responds to
22 treatment and one who is able to enter the workforce.” *Id.* at 1017 n.23 (quoting *Scott v. Astrue*,
23 647 F.3d 734, 739–40 (7th Cir. 2011)). The evidence to which the ALJ cited here showed some

1 reports of improvement, but no long-term control of symptoms, or improvement to the point that
2 the evidence contradicted Plaintiff's testimony. For example, Plaintiff reported at one visit that
3 her antidepressant was improving her mood, but her panic attacks had gotten worse and she still
4 exhibited an anxious mood. AR 745. Elsewhere, Plaintiff reported group therapy was helping,
5 but she still felt lost, sad, and bothered by loud noises. See AR 631, 633–34. The ALJ's finding
6 that Plaintiff's testimony was inconsistent with her improvement with treatment was not
7 supported by substantial evidence.

8 The ALJ rejected Plaintiff's testimony regarding the severity of her symptoms from her
9 mental and physical statements because he determined it was inconsistent with her level of
10 functioning in her daily activities. An ALJ may reject a plaintiff's symptom testimony based on
11 her daily activities if they contradict her testimony or "meet the threshold for transferable work
12 skills." *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (citing *Fair v. Bowen*, 885 F.2d 597,
13 603 (9th Cir. 1989)). Regarding Plaintiff's symptoms from her mental impairments, the ALJ
14 noted Plaintiff made wreaths to sell online, attended several family events, participated in group
15 therapy, moved to a new living space, and attended a masquerade party. AR 20. None of these
16 activities contradicted Plaintiff's testimony or showed transferable work skills. For example,
17 participating in family events does not contradict Plaintiff's claims that she needs a family
18 member with her to go out in public. See AR 360, 553. Similarly, participating in group
19 therapy, a setting specifically designed to treat Plaintiff's symptoms, does not contradict
20 Plaintiff's claims that she has difficulty leaving her home unaccompanied. See AR 631, 633,
21 634, 640, 641. Plaintiff did attend a masquerade party without having anxiety, as the ALJ noted,
22 but this single instance does not negate her testimony, particularly when, as discussed above, the
23 ALJ failed to adequately evaluate the medical evidence showing continued anxiety. See *Fair*,

1 885 F.2d at 603 (“[T]he Social Security Act does not require that claimants be utterly
2 incapacitated to be eligible for benefits . . .”).

3 Turning to Plaintiff’s physical symptoms, the ALJ failed to identify any activities that
4 contradicted Plaintiff’s claims or showed transferable work skills. The ALJ noted Plaintiff
5 “drives, shops for food in stores, prepares simple meals, and does her own laundry.” AR 21.
6 But “the mere fact that a plaintiff has carried on certain daily activities, such as grocery
7 shopping, driving a car, or limited walking for exercise, does not in any way detract from her
8 credibility as to her overall disability.” *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001).
9 Similarly, the fact that Plaintiff “does crafts, reads, watches television, and uses her smart phone
10 to do internet research, play games, and interact on social media” does not establish that she can
11 perform the physical activities required of work. AR 21. The ALJ thus erred.

12 Defendant argues Plaintiff waived any challenge to her physical symptom testimony
13 because the ALJ found no severe physical impairment at step two, and Plaintiff did not challenge
14 that finding. *See* Dkt. 24, p. 3. Even assuming Plaintiff waived a challenge to the ALJ’s step
15 two finding, that does not absolve the ALJ here. The step-two inquiry “is not meant to identify
16 the impairments that should be taken into account when determining the RFC.” *Buck v.*
17 *Berryhill*, 869 F.3d 1040, 1048–49 (9th Cir. 2017). At the RFC phase, the ALJ must consider
18 the claimant’s limitations from all impairments, including those that are not severe. *Id.* at 1049.
19 “The RFC therefore should be exactly the same regardless of whether certain impairments are
20 considered ‘severe’ or not.” *Id.* (emphasis omitted). And the ALJ’s step two analysis did not
21 provide any specific evaluation of the evidence that could undermine Plaintiff’s testimony, as the
22 ALJ simply concluded that the evidence did not indicate any “ongoing complications or severe
23 symptoms from [Plaintiff’s alleged physical] impairments that cause more than minimal

1 limitation in basic work activities.” AR 17. The ALJ thus harmfully erred in rejecting Plaintiff’s
2 physical and mental symptom testimony.

3 **B. The Physical Limitation Opinions of Dr. Dodge, Dr. Staley, and Dr. Fitterer**

4 Plaintiff contends the ALJ’s RFC determination was not supported by substantial
5 evidence because the ALJ erroneously rejected Dr. Dodge’s opinions and failed to adequately
6 address Dr. Staley’s and Dr. Fitterer’s opinions. Dkt. 18, pp. 6–7. Dr. Dodge was Plaintiff’s
7 primary care doctor. *See* AR 320–23, 572–80, 585–607. In August 2018, Dr. Dodge completed
8 a physical functional evaluation. *See* AR 464–68. Dr. Dodge opined, among other things, that
9 Plaintiff had a mild limitation in her ability to lift, crouch, and bend due to degenerative disc
10 disease. *Id.* Dr. Dodge opined that Plaintiff was limited to light work, defined as lifting 20
11 pounds maximum and 10 pounds frequently, and walking or standing six out of eight hours. AR
12 466.

13 Dr. Staley and Dr. Fitterer each opined that Plaintiff was limited to lifting 20 pounds
14 occasionally and ten pounds frequently, could stand and/or walk for six hours in an eight-hour
15 work day, and could sit for six hours in an eight-hour work day due to a spine disorder and
16 history of deep vein thrombosis. AR 84, 98–99. Dr. Staley and Dr. Fitterer opined that Plaintiff
17 was limited to frequently climbing ladders, ropes, and scaffolds, and crawling. AR 84–85, 99.

18 The ALJ found Dr. Dodge’s opinions unpersuasive. AR 21. The ALJ reasoned a lumbar
19 MRI showed relatively mild degenerative changes, Dr. Dodge found Plaintiff had normal range
20 of motion in her spine and all joints, Dr. Dodge noted Plaintiff’s symptoms were intermittent,
21 and Dr. Dodge noted Plaintiff was seeking disability based on psychological impairments. *Id.*
22 The ALJ did not state whether he found Dr. Staley’s and Dr. Fitterer’s opinions persuasive, but
23 the context of the ALJ’s decision and the similarities among these doctors’ opinions indicates the

1 ALJ was rejecting all three doctors' opinions for the same reasons. *See id.*; *see also Molina v.*
2 *Astrue*, 674 F.3d 1104, 1121 (9th Cir. 2012) ("Even when an agency explains its decision with
3 less than ideal clarity, we must uphold it if the agency's path may be reasonably discerned."
4 (internal quotation marks and citations omitted)).

5 The Commissioner argues new regulations promulgated in 2017 change the standard by
6 which the ALJ's reasons for rejecting medical providers' opinions are measured. *See* Dkt. 24,
7 pp. 6–7. In 2017, the Commissioner issued new regulations governing how ALJs are to evaluate
8 medical opinions. *See* Revisions to Rules Regarding the Evaluation of Medical Evidence, 82
9 Fed. Reg. 5844-01, 2017 WL 168819 (Jan. 18, 2017). Under the new regulations, for claims
10 filed on or after March 27, 2017, the Commissioner "will not defer or give any specific
11 evidentiary weight . . . to any medical opinion(s) . . . including those from [the claimant's]
12 medical sources." 20 C.F.R. § 416.920c(a). The ALJ must nonetheless explain with specificity
13 how he or she considered the factors of supportability and consistency in evaluating the medical
14 opinions. 20 C.F.R. § 416.920c(a)–(b). That explanation must be legitimate, as the Court will
15 not affirm a decision that is based on legal error or not supported by substantial evidence. *See*
16 *Trevizo*, 871 F.3d at 674. Thus, the regulations require the ALJ to provide specific and
17 legitimate reasons to reject a doctor's opinions. *See also Kathleen G. v. Comm'r of Soc. Sec.*,
18 No. C20-461 RSM, 2020 WL 6581012, at *3 (W.D. Wash. Nov. 10, 2020) (finding that the new
19 regulations do not clearly supersede the "specific and legitimate" standard because the "specific
20 and legitimate" standard refers not to how an *ALJ* should weigh or evaluate opinions, but rather
21 the standard by which the *Court* evaluates whether the ALJ has reasonably articulated his or her
22 consideration of the evidence).

23 Turning to the ALJ's analysis of Dr. Dodge's opinions, and, by inference, Dr. Staley's

1 and Dr. Fitterer's opinions, Plaintiff has failed to show harmful error. *See Ludwig v. Astrue*, 681
2 F.3d 1047, 1054 (9th Cir. 2012) (citing *Shinseki v. Sanders*, 556 U.S. 396, 407–09 (2009))
3 (holding that the party challenging an administrative decision bears the burden of proving
4 harmful error). The ALJ reasonably found the doctors' opinions that Plaintiff was limited due to
5 back pain were inconsistent with the medical evidence. *See Batson v. Comm'r of Soc. Sec.*
6 *Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004) (holding that a treating physician's opinion may
7 properly be rejected where it is contradicted by other medical evidence in the record). As the
8 ALJ noted, the MRI of Plaintiff's lumbar spine showed "[r]elatively mild degenerative changes
9 to the lumbar spine . . . without significant central canal or foraminal stenosis." *See* AR 469–70.
10 The ALJ also noted Dr. Dodge found Plaintiff had normal range of motion in all major joints.
11 *See* AR 467–68. These findings of essentially no documented back impairments are inconsistent
12 with the doctors' opinions of limitation due to such an impairment.

13 The ALJ erred in rejecting Dr. Dodge's opinions based on the claim that Dr. Dodge noted
14 Plaintiff was alleging disability based on her mental symptoms rather than her physical ones, but
15 that error was harmless. An error is harmless "where it is 'inconsequential to the ultimate
16 nondisability determination.'" *Molina*, 674 F.3d at 1115 (quoting *Carmickle v. Comm'r, Soc.*
17 *Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008)). The ALJ reasonably rejected Dr. Dodge's
18 opinions as inconsistent with the medical evidence, so his inclusion of an erroneous reason for
19 rejecting those opinions was inconsequential and thus harmless.

20 C. The Mental Limitation Opinions of Dr. Ruddell and Ms. Grossan

21 Plaintiff contends the ALJ erred by rejecting the opinions of examining psychologist Dr.
22 Ruddell and treating therapist Ms. Grossan. Dkt. 18, pp. 7–9. Different standards apply to the
23 ALJ's reasons for rejecting these providers, so the Court addresses them separately.

1 1. Dr. Ruddell's Opinions

2 Dr. Ruddell examined Plaintiff in August 2018. *See* AR 459–63. Dr. Ruddell opined
3 that Plaintiff had marked limitations in her ability to perform activities within a schedule and
4 maintain attendance, adapt to changes in a routine work setting, complete a normal work day or
5 week without interruptions, and set realistic goals and plan independently. AR 461. Dr. Ruddell
6 opined that Plaintiff was severely limited in her ability to learn new tasks. *Id.*

7 The ALJ rejected Dr. Ruddell's opinions as inconsistent with and unsupported by the
8 medical evidence, and inconsistent with Plaintiff's activities of daily living. AR 22. As
9 explained above, the ALJ needed to give specific and legitimate reasons for rejecting Dr.
10 Ruddell's opinions. *See Kathleen G.*, 2020 WL 6581012, at *3. None of the ALJ's reasons met
11 this standard.

12 The ALJ erred in rejecting Dr. Ruddell's opinions. The ALJ's reasons for rejecting Dr.
13 Ruddell's opinions mirrored his reasons for rejecting Plaintiff's mental symptom testimony. *See*
14 AR 20, 22. That analysis fails with respect to Dr. Ruddell's opinions for the same reasons it
15 failed with respect to Plaintiff's testimony. The ALJ therefore failed to give specific and
16 legitimate reasons for rejecting Dr. Ruddell's opinions, and harmfully erred.

17 2. Ms. Grossan's Opinions

18 Ms. Grossan was one of Plaintiff's therapists. *See* AR 608–30, 638–39, 642–44, 646–50,
19 657–65, 669–77, 681–83, 687–95, 699–707, 711–13, 717–29. Ms. Grossan responded to a
20 questionnaire from Plaintiff's counsel in May 2019. AR 748–49. Ms. Grossan agreed with a
21 statement that Plaintiff suffered from symptoms that would interfere with her ability to maintain
22 concentration, persistence, and pace at a job even if she was limited to simple, routine tasks and
23 occasional, superficial interaction with others. AR 748. Ms. Grossan agreed Plaintiff suffered

1 from symptoms that would interfere with her ability to perform activities within a schedule,
2 maintain regular attendance, and be punctual within customary tolerances. AR 749.

3 The ALJ rejected Ms. Grossan's opinions as inconsistent with the medical evidence of
4 unremarkable mental status exams and improvement on medication. AR 22.

5 The ALJ was required to give germane reasons to reject Ms. Grossan's opinions. *See*
6 *Molina*, 674 F.3d at 1111. Ms. Grossan is not an acceptable medical source under the
7 Commissioner's new regulations, and is thus not entitled to the same level of deference as
8 licensed medical professionals such as doctors and nurse practitioners. *See id.*; 20 C.F.R. §
9 416.902(a).

10 Even under this lighter standard, the ALJ erred. The ALJ's reasoning here again
11 mirrored his analysis with respect to Plaintiff's testimony. *See* AR 20–22. That reasoning fails
12 for the same reasons it failed with respect to Plaintiff's testimony. The ALJ therefore failed to
13 give germane reasons to reject Ms. Grossan's opinions, and harmfully erred.

14 **D. Scope of Remand**

15 Plaintiff cursorily asks the Court to remand this matter for an award of benefits. *See* Dkt.
16 21, p. 7. Except in rare circumstances, the appropriate remedy for an erroneous denial of
17 benefits is remand for further proceedings. *See Leon v. Berryhill*, 880 F.3d 1041, 1043 (9th Cir.
18 2017) (citing *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1100 (9th Cir. 2014)).
19 Plaintiff has not analyzed the factors the Court considers before remanding for an award of
20 benefits, nor shown any rare circumstances. The Court will remand for further administrative
21 proceedings.

22 On remand, the ALJ shall reevaluate Plaintiff's testimony regarding the severity of her
23 symptoms, Dr. Ruddell's opinions, and Dr. Grossan's opinions. The ALJ shall reassess

1 Plaintiff's RFC, and all relevant steps of the disability evaluation process. The ALJ shall
2 conduct all further proceedings necessary to reevaluate the disability determination in light of
3 this opinion.

4 **CONCLUSION**

5 For the foregoing reasons, the Commissioner's final decision is **REVERSED** and this
6 case is **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. §
7 405(g).

8 DATED this 23rd day of June, 2021.

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11 The Honorable Richard A. Jones
12 United States District Judge
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